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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2470/2014*, **, ***

Communication submitted by:	Hibaq Said Hashi (represented by counsel, Stinne Ostergaard Poulsen, of the Danish Refugee Council)
Alleged victims:	The author and her minor son, S.A.A.
State party:	Denmark
Date of communication:	27 October 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 October 2014 (not issued in document form)
Date of adoption of Views:	28 July 2017
Subject matter:	Deportation to Italy
Procedural issue:	Failure to sufficiently substantiate allegations
Substantive issue:	Inhuman and degrading treatment
Article of the Covenant:	7
Article of the Optional Protocol:	2

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

*** A joint opinion by Committee members Yuval Shany, Christof Heyns and Photini Pazartzis (dissenting) is annexed to the present Views.

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1.1 The author of the communication is Hibaq Said Hashi, a national of Somalia born on 1 January 1989. She is making the complaint on behalf of herself and her minor child, S.A.A., born on 18 May 2012 in Sweden. The author claims that if the State party were to forcibly deport her and her son to Italy, it would violate their rights under article 7 of the Covenant. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel.

1.2 On 27 October 2014, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author and her minor son to Italy while their case was under consideration by the Committee. On 28 October 2014, the Refugee Appeals Board suspended their deportation from the State party until further notice, in compliance with the Committee's request.

1.3 On 28 January and 7 December 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

The facts as submitted by the author

2.1 The author, originally from Qoryooley in Shabelle Hoose, Somalia, belongs to the Madhiban clan and professes the Muslim faith. She has no schooling and used to work in Somalia painting hands and feet using henna. Her town was dominated for the most part by the Gare and Jidle clans and controlled by Al-Shabaab. After her divorce from her first husband, she became acquainted with her current spouse, whom she married in February 2011. When her current spouse's family learned about her first marriage in May 2011, they reacted violently since they did not accept that her current husband, who belonged to the Hawadle clan, had married someone from a different clan. In addition, her former husband informed Al-Shabaab that, in fact, he and the author had not even divorced and that she had had sexual intercourse with another man. On 2 July 2011, Al-Shabaab contacted the author's father and informed him that the author had had sexual intercourse with another man and that she had to be stoned. On the same day, her father helped her to leave Qoryooley. On 3 July 2011, Al-Shabaab killed the author's father. Her current husband was sentenced to death and the author does not know his whereabouts. She fled Somalia because of her fear of persecution by Al-Shabaab.

2.2 In August 2011, the author arrived in Italy by boat. She was registered on 11 August 2011 and was placed in reception facilities. According to the author, the living conditions in the reception facilities were poor: she slept under a shed roof on a mattress without sheets and had only one meal a day. Aside from the initial registration, she does not remember being interviewed by the Italian police and was not aware that she had a residence permit to live in Italy (see paragraph 2.6 below). At some point, she became pregnant and started bleeding and feeling sick. The author claims that, although the summary of the interview with the police, as reflected in the Refugee Appeals Board's decision of 13 January 2014, indicates that she was hospitalized, this was not the case. She was informed that she could not go to a hospital nor see a doctor. She was then attended to by a nurse, who confirmed that her fetus was alive, but she did not receive any particular care. Sometimes she did not eat as she was too weak to stand in line for the daily meal.

2.3 In March 2012, the author felt better, but still faced difficulties in getting food and access to basic sanitary facilities. As she found out that access to housing in Italy was very difficult and feared giving birth without access to medical assistance, she travelled to Sweden, where she gave birth to her son on 18 May 2012. The author claims that her minor son was not registered in Italy and does not have an Italian residence permit.

2.4 When the author learned that the Swedish authorities planned to send her back to Italy, she decided to move to Denmark, where she and her son arrived, without valid travel documents, on 1 August 2012. On 2 August 2012, she applied for asylum at the Danish Immigration Service. The author claimed that if she were returned to Somalia she would be persecuted by Al-Shabaab; that her father was killed by this group; and that her current husband was sentenced to death. In addition, during the proceedings, she argued that if she were returned to Italy she would once again experience harsh living conditions and would

not be able to provide for her son's basic needs. She expected to face homelessness and destitution, being entirely dependent on churches for food.

2.5 According to the registration report of 16 August 2012 prepared by the National Aliens Centre of the Danish National Police, the author declared that on her arrival in Italy that she had been hospitalized due to her pregnancy; that she had not asked or applied for asylum in Italy or received a residence permit or any other documents from the authorities; and that in March 2012, she had travelled to Sweden with a counterfeit Italian passport because the living conditions in Italy were not adequate for a pregnant woman. She referred to the poor quality of food, lack of access to water and the fact that she had been left on her own and unable to support herself.

2.6 On 19 March 2013, the Immigration Service requested information from Italy under article 21 of the Dublin Regulation. On 4 June 2013, the Italian authorities informed the Danish Immigration Service that the author had been granted residency in the form of subsidiary protection in Italy until 22 December 2014.

2.7 On 18 November 2013, the author was interviewed by the Immigration Service. According to the report of that interview, the author stated that she was not sure that she had been granted residency in Italy; that she had been given many documents and did not know whether they had included a residence permit; that she had been ill and had been treated at hospital; that she had not been hospitalized, but that a nurse had visited her at home in a rural dwelling where she was living at that time; and that she had left Italy immediately after she had recovered. During the interview, the author was informed that, on 4 June 2013, the Italian authorities had stated that she had been granted subsidiary protection and a residence permit valid until 22 December 2014. She was also informed that, according to the judgment of the European Court of Human Rights in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*,[1] a person granted subsidiary protection in Italy would be provided with a renewable residence permit with a validity of three years; and that such a permit entitled its holder to, inter alia, a travel document for aliens and the right to work, family reunification, social assistance, health care, social housing and education under Italian national law.[2] The author provided no comment regarding this information. On the same day, the Immigration Service determined that the author was in need of subsidiary protection owing to her situation in Somalia, but that she should be deported to Italy as her fist country of asylum. The author appealed the decision before the Refugee Appeals Board.

2.8 At the hearing before the Board, the author stated that she had lived a difficult life in Italy since, after receiving little food, she had been undernourished, fainted often and almost had a miscarriage. However, no one took her to a hospital. She had complained about those living conditions, without success. Therefore, if she were returned to Italy, her life would be at risk.

2.9 On 13 January 2014, the Board considered that the author fell within the purview of section 7 (2) of the Aliens Act as a result of the persecution by Al-Shabaab[3] and that, consequently, the question was whether Italy could serve as her first country of asylum, in accordance with section 7 (3) of the Aliens Act.[4] The Board referred to the decision of the European Court in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*[5] and found that it could not be accepted as fact that the author would have starved to death if she had stayed in Italy; that the author would be protected against refoulement on her return to Italy, where she had been granted temporary residence until the end of 2014; and that the

[1] Application No. 27725/10, decision of 2 April 2013.

[2] The Board's decision of 13 January 2014 refers to the decision of the European Court in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, paras. 37-39.

[3] Section 7 (2) establishes: "Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin."

[4] Section 7 (3) establishes: "A residence permit under subsections (1) and (2) may be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed able to obtain protection."

[5] See paragraph 38 of the decision.

financial and social conditions offered to her would be adequate for Italy to serve as her first country of asylum, with reference to section 7 (3) of the Aliens Act. Accordingly, the Board ordered the author to leave Denmark with her son within 15 days.

2.10 The author asserts that she has exhausted all domestic remedies in Denmark as the Board's decision is final and cannot be appealed in the Danish courts.

The complaint

3.1 The author submits that by forcibly returning her and her son to Italy, the State party would violate their rights under article 7 of the Covenant.[6] Due to shortcomings concerning the reception conditions for asylum seekers and refugees with temporary residence permits in Italy, she and, in particular, her minor son would be at risk of inhuman and degrading treatment; they would be destitute with no access to housing, food or health assistance. In this connection, she refers to the experience that she went through in Italy prior to her departure and points out that, despite her pregnancy, she was not able to find sufficient medical assistance, adequate housing nor any durable humanitarian solution. If deported, she would no longer be eligible for housing in a reception centre. Under those circumstances, her deportation would be contrary to the best interests of her child.

3.2 As regards the principle of first country of asylum, the author refers to the Office of the United Nations High Commissioner for Refugees (UNHCR) Executive Committee conclusion No. 58 (XL) (1989) on the problem of refugees and asylum seekers who move in an irregular manner from a country in which they had already found protection, according to which this principle should only be applied if, once returned to their first country of asylum, refugees and asylum seekers are permitted to remain there and be treated in accordance with recognized basic human standards until a durable solution is found for them.

3.3 The Italian reception system for asylum seekers and beneficiaries of international protection is insufficient and does not comply with basic human standards and international obligations regarding protection. According to reports, hundreds of migrants, including asylum seekers, live in abandoned buildings in Rome and have limited access to public services.[7] Due to the lack of reception facilities and housing, many asylum seekers and refugees in Italy live on the streets and only occasionally receive food or shelter from churches and non-governmental organizations. Returnees who were granted international protection and benefited from the reception system when they first arrived in Italy are not entitled to accommodation in reception centres.[8] The Jesuit Refugee Service, in its annual report for 2013, stated that there was a real problem as regards those who were sent back to Italy and who had already been granted some kind of protection. If someone voluntarily leaves one of the accommodation centres that are available upon arrival before the established time, they are no longer entitled to such accommodation.[9] Most of those occupying abandoned buildings in Rome fall into this category. The findings show that the lack of places to stay is a significant problem, especially for returnees who, in most cases, benefit from international or humanitarian protection.

State party's observations on admissibility and the merits

4.1 On 27 April 2015, the State party provided observations on the admissibility and merits of the communication. The State party considers that the author has failed to

[6] See *M.S.S. v. Belgium and Greece* (application No. 30696/09), judgment of 15 December 2010; and *Samsam Mohammad Hussein and Others v. the Netherlands and Italy*.

[7] See United States of America, Department of State, *2012 Country Reports on Human Rights Practices — Italy* (Washington, D.C., 19 April 2013).

[8] See Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in Particular Dublin Returnees, in Italy* (Berne, August 2016); Asylum Information Database, "National country report: Italy" (May 2013); and European Council on Refugees and Exiles, "Dublin II Regulation: national report, European network for technical cooperation of the application of the Dublin II Regulation — Italy" (December 2012).

[9] Jesuit Refugee Service, *Protection Interrupted — The Dublin Regulation's Impact on Asylum Seekers' Protection* (Brussels, June 2013), pp. 152 and 161.

establish a prima facie case for the admissibility of her allegations under article 7 of the Covenant. There are no substantial grounds for believing that she and her son risk being subjected to torture or to cruel, inhuman or degrading treatment if returned to Italy, and therefore the communication is manifestly ill-founded and should be declared inadmissible. Should the Committee be of the view that the author's allegations are admissible, the State party maintains that article 7 of the Covenant would not be violated if the author and her minor son are returned to Italy.

4.2 The State party describes the structure, composition and functioning of the Board and the legislation applying to cases related to the Dublin Regulation.[10]

4.3 The author did not produce any essential new information about her case before the Committee beyond that already relied upon in connection with her asylum proceedings. The State party considers that the information provided was thoroughly reviewed by the Board in its decision of 13 January 2014. The Board found that the author fell within the purview of section 7 (2) of the Aliens Act. However, since she had previously been granted subsidiary protection in Italy, she could return and stay there lawfully with her child. Italy is considered the first country of asylum, which justifies the refusal of the Danish authorities to grant them asylum, in accordance with section 7 (3) of the Aliens Act.

4.4 When applying the principle of first country of asylum, the Board requires, at a minimum, that the asylum seeker is protected against refoulement and that he or she is able to legally enter and take up lawful residence in that country. Such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that a person must enjoy personal safety, both upon entering and while staying in the first country of asylum. However, the State party considers that it is not possible to insist that asylum seekers have exactly the same social and living standards as nationals of the country.

4.5 The State party refers to the decision of inadmissibility of the European Court in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* on 2 April 2013 concerning the treatment of asylum seekers, persons granted subsidiary protection in Italy and returnees, in accordance with the Dublin Regulation.[11] Taking into account the reports of governmental and non-governmental organizations, the Court considered that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings … it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S. v. Belgium and Greece*".[12] The Court noted that a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens, apply for family reunification and benefit from the general schemes for social assistance, health care, social housing and education. Likewise, an alien is able to apply for the renewal of his or her residence permit upon its expiry. The Court found the applicant's allegations manifestly ill-founded and inadmissible and that the applicant could be returned to Italy. With regard to the present case, the State party considers that, although the author has relied on the Court's findings in *M.S.S. v. Belgium* and Greece (2011), its decision in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (2013) is more recent and specifically addresses the conditions in Italy. Hence, the State party maintains that, as the Court noted, a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens, apply for family reunification and benefit from the general schemes for social assistance, health care, social housing and education.

[10] See communication No. 2379/2014, *Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1-4.3.

[11] See *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, paras. 38-39 and 47-48.

[12] Ibid., para. 78.

4.6 The State party also refers to the 2013 country report on Italy cited by the author — prepared as part of the Asylum Information Database project — according to which some asylum seekers who did not have access to asylum centres were obliged to live in "self-organized settlements", which are often overcrowded. The State party submits that the report was updated in December 2013 and that the country report indicates that those were the reception conditions in Italy for asylum seekers and not for aliens who, like the author, had already been issued residence permits. Likewise, the author has mainly referred to reports and other background material concerning reception conditions in Italy that are only relevant to asylum seekers, including returnees to Italy under the Dublin Regulation, and not to persons who have already been granted subsidiary protection in Italy. Furthermore, as compared with the Court's decision in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, there is no new information on the general conditions in Italy of persons who have been granted a residence permit.

4.7 The State party refers to another judgment of the Court, *Tarakhel v. Switzerland*,[13] in which the Court found that the return of an Afghan family from Switzerland to Italy would constitute a breach of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (prohibition of inhuman or degrading treatment) if the Swiss authorities were to send the asylum seekers back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken in charge in a manner adapted to the age of their children and that the family would be kept together. The State party considers that the judgment rendered in *Tarakhel v. Switzerland* does not deviate from the Court's jurisprudence regarding individuals and families with residence permits for Italy,[14] as it concerns a case involving asylum seekers. It submits that States parties cannot be expected to obtain individual guarantees from the Italian authorities before returning individuals or families in need of protection who have already been granted residence in Italy.

Author's comments on the State party's observations

5.1 On 15 January 2016, the author submitted her comments on the State party's observations and reiterated her previous remarks about a violation of article 7 of the Covenant. She asserts that the living conditions in Italy for asylum seekers and the beneficiaries of international (subsidiary) protection are similar, since there is no effective integration scheme in place. Asylum seekers and recipients of subsidiary protection thus often face the same severe difficulties in Italy finding basic shelter, access to sanitary facilities and food.[15] The fact that the reports cited in her original communication focus mainly on reception facilities for asylum seekers does not make the information regarding the living conditions for beneficiaries of international protection less valid.

5.2 The author further disputes the interpretation of the jurisprudence of the European Court referred to by the State party. The author contends that the passages highlighted by the State party in the *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* case describe the formal relevant Italian legislation provided by the Italian authorities.[16] However, this information on the reception conditions of asylum seekers and refugees does not correspond to the findings of UNHCR and NGOs.[17]

5.3 Contrary to the State party's interpretation, a more relevant case in the Court's jurisprudence is *Tarakhel v. Switzerland*, given that, as stated above, the living conditions and difficulties in finding shelter, health assistance and food are similar for asylum seekers and persons who have already been granted protection. In *Tarakhel v. Switzerland*, the

[13] Application No. 29217/12, judgment of 4 November 2014.

[14] As established in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*.

[15] See United States of America, Department of State, *2012 Country Reports on Human Rights Practices — Italy*; Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in Particular Dublin Returnees, in Italy*; and Asylum Information Database, "National country report: Italy".

[16] *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, paras. 38-39.

[17] Ibid., paras. 77-78.

Court stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable. The Court found that, in the current situation in Italy, "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded".[18] The Court required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; if such assurances were not made, Switzerland would be in violation of article 3 of the Convention by transferring them to Italy. The judgment in the *Tarakhel v. Switzerland* case seems to indicate that the assumption premise laid out in the decision in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* can no longer be regarded as sufficient. On the contrary, according to the Court, individual guarantees, especially those against destitution and harsh accommodation conditions for children, are required. The author argues that, in the light of this finding, the harsh conditions faced by recipients of subsidiary protection returning to Italy would fall within the scope of article 3 of the European Convention and article 7 of the Covenant. Accordingly, she reiterates that her and her child's deportation to Italy would constitute a violation of article 7 of the Covenant.[19]

5.4 The author finally points out that returning families who have already been granted international protection might even face greater difficulties in finding shelter, access to sanitary facilities and food than returning asylum seekers, as the latter enjoy a minimum of protection under the Dublin Regulation system and, if fortunate, have access to reception facilities supported by the European Union. Returning families with international protection do not, however, have access to reception facilities and thus face the risk of homelessness immediately upon return, with little prospect of improving their situation due to the malfunctions of the Italian integration scheme for beneficiaries of international protection. In this connection, the author refers to the Committee's Views in the case of *Jasin v. Denmark*,[20] stressing that it is very similar to her case.

Further submissions from the parties

6.1 On 5 October 2016, the State party reiterated its observations on admissibility and the merits. The State party noted that, according to the Italian authorities' response to its consultation in the summer of 2015, an alien granted residency in Italy with refugee or protection status may apply for the renewal of his or her residence permit on his or her return to Italy, even if the residence permit has expired. The Italian authorities also informed the Danish authorities that, on his or her return to Italy, such an alien must contact the police station that issued the residence permit, which will subsequently forward the request to the proper authority and ask for verification of whether the conditions for renewal are met. The Italian authorities stated that an alien whose residence permit has expired may lawfully enter Italy for the purpose of having it renewed. Against this background, the State party finds that it can be considered a fact that the author, whose residence permit for protection status in Italy has expired, is entitled to enter Italy and apply to renew it.

6.2 The author's claims about her experience in Italy are inconsistent with the background information on Italy available to the Board and the information provided by the author to the Danish National Police and the Immigration Service. According to the country report on Italy, published in December 2015 as part of the Asylum Information Database project (pp. 83 ff), refugees and aliens granted subsidiary protection, as in the author's case, have the same right to medical treatment as Italian nationals. Furthermore, it appears that asylum seekers and beneficiaries of international protection benefit from health services free of charge on the basis of a self-declaration of destitution. It also appears that the right

[18] See *Tarakhel v. Switzerland*, para. 115.

[19] The author quotes the European Court's judgment in *Tarakhel v. Switzerland*, in which it indicated that, if no proper reception facilities adapted to children were available, "the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention" (para. 119).

[20] Communication No. 2360/2014, *Jasin v. Denmark*, Views adopted on 22 July 2015, paras. 8.8-10.

to medical assistance is acquired at the moment of registering the asylum request and that this right continues even during the renewal of a stay permit. In addition, it appears from the interview report by the Danish National Police on 16 August 2012 that the author stated that "she had been hospitalized in Italy". According to the report of the interview conducted by the Immigration Service on 18 November 2013, the author provided the following information: "At that time, the applicant had been ill and had been treated at the hospital … . The applicant stated that she had in fact not been hospitalized, but that a nurse had visited her at home in a rural dwelling that she had lived in at that time. She had also been treated there. The applicant had left Italy right after she had recovered."

6.3 Unlike in *Jasin v. Denmark*, in the present case neither the author nor her son suffers from any diseases requiring medical treatment and no exceptional circumstances exist. The State party's authorities adequately took into account the information provided by the author on her own experience. In the case of *A.A.I. and A.H.A. v. Denmark*,[21] the Committee found the communication inadmissible, as the authors' previous experiences in Italy did not substantiate their claim that, if returned to Italy, they would be at a real risk of cruel, inhuman or degrading treatment. Most recently, the European Court stated in a case concerning the deportation of a single mother and her two minor children to Italy that "the applicant has not demonstrated that her future prospects, if returned to Italy with her children, whether looked at from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship that is severe enough to fall within the scope of Article 3".[22]

7. On 7 October 2016, the author reiterated her previous allegations and argued that she, as single mother with a minor child, will find herself in a similar vulnerable position as the authors and their children in *Jasin v. Denmark* and *Ali and Mohamad v. Denmark*.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the author's claim under article 7 of the Covenant is unsubstantiated. The Committee considers, however, that the author has sufficiently substantiated her claims for the purposes of admissibility. Accordingly, the Committee declares the communication admissible insofar as it raises issues under article 7 of the Covenant and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that deporting her and her minor son to Italy, based on the principle of first country of asylum according to the Dublin Regulation, would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The author bases her arguments on, inter alia: the actual treatment she received in Italy; her

[21] Communication No. 2402/2014, *A.A.I. and A.H.A. v. Denmark*, decision adopted on 29 March 2016.

[22] See *N.A. and Others v. Denmark* (application No. 15636/16), decision of 28 June 2016, para. 32.

particular vulnerability as a single mother with a small child; the general reception facilities for asylum seekers in Italy; and the failure of the Italian integration scheme for beneficiaries of international protection, as described in various reports.

9.3 The Committee recalls its general comment No. 31,[23] in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[24] The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists,[25] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[26]

9.4 The Committee notes that the author has not challenged the information provided by the Italian authorities to the Danish Immigration Service that she was granted subsidiary protection in Italy with a residence permit that expired on 22 December 2014. The Committee further notes the author's allegation that, although she was pregnant and had health problems at the time she was living in Italy, she was not given any special care and had difficulties getting food and access to basic sanitary facilities.

9.5 The Committee notes the various reports submitted by the author highlighting the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulation. The Committee notes in particular the author's submission that returnees, like herself, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy are no longer entitled to accommodation in the public reception centres for asylum seekers.[27] The Committee also notes that the author submits that returnees also face severe difficulties in Italy finding access to sanitary facilities and food.

9.6 The Committee notes the finding of the Board that Italy should be considered the first country of asylum in the present case and the position of the State party that such a country is obliged to provide asylum seekers with basic human standards, although it is not required that such persons have the same social and living standards as nationals of the country (see paragraph 4.4 above). The Committee also notes that the State party also referred to a decision of the European Court of Human Rights, in which the Court stated that, although the situation in Italy had its shortcomings, it had not disclosed a systemic failure to provide support or facilities catering for asylum seekers (see paragraph 4.5 above).

9.7 The Committee recalls that States parties should, when reviewing challenges to decisions to remove individuals from their territory, give sufficient weight to the real and personal risk such individuals might face if deported.[28] In particular, any evaluation of whether individuals are likely to be exposed to conditions constituting cruel, inhuman or degrading treatment in violation of article 7 of the Covenant must be based not only on an assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. Those circumstances include factors that increase

[23] See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[24] See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[25] See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

[26] See communications No. 2681/2015, *Y.A.A. and F.H.M. v. Denmark*, Views adopted on 10 March 2017, para. 7.3; and No. 2512/2014, *Rezaifar v. Denmark*, Views adopted on 10 March 2017, para. 8.3.

[27] See Asylum Information Database, "National country report: Italy", pp. 54-55.

[28] See, for example, communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; and No. 2409/2014, *Ali and Mohamad v. Denmark*, Views adopted on 29 March 2016, para. 7.8.

the vulnerability of such persons and that could transform a situation that is tolerable for most into an intolerable one for others. They should also take into account, in cases considered under the Dublin Regulation, the previous experiences of the removed individuals in the first country of asylum, which may underscore the special risks that they are likely to face and may thus render their return to the first country of asylum a particularly traumatic experience for them.[29]

9.8 The Committee notes the information provided to the State party by the Italian authorities according to which an alien who has been granted residency in Italy as a recognized refugee or has been granted protection status may submit a request to renew his or her expired residence permit upon re-entry into Italy.

9.9 However, the Committee considers that the State party did not fully examine the author's claims, based on her personal circumstances, that, despite being granted residency in Italy, she would face unbearable living conditions there.

9.10 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported[30] and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author and her son would face in Italy, rather than rely on general reports and on the assumption that, as the author had benefited from subsidiary protection in the past, she would, in principle, be entitled to the same level of subsidiary protection today. The Committee notes that the author was able to stay in reception facilities in the past. However, according to the author's uncontested allegations: she faced poor living conditions, even during her pregnancy, since she slept under a shed roof on a mattress without sheets and with only one meal per day; she has no education; and, although she acknowledged that she had received many documents from the Italian authorities, she was not aware that she had a residence permit to live in Italy. The Committee also notes the author's allegations that, owing to the difficulties in getting access to sufficient food and medical care in Italy, she was undernourished, fainted often and almost had a miscarriage. The information before the Committee shows that persons in a situation similar to that of the author often end up living on the streets or in precarious and unsafe conditions unsuitable, in particular, for small children. However, the Board's decision failed to assess the author's personal past experience in Italy and the foreseeable consequences of forcibly returning her. Against this background, the Committee considers that the State party failed to give due consideration to the special vulnerability of the author, a single mother with no education, with a 5-year-old child, and with no previous integration into Italian society. Notwithstanding her formal entitlement to subsidiary protection in Italy, there is no indication that, in practice, the author would actually be able to find accommodation and provide for herself and her child in the absence of assistance from the Italian authorities. The State party also failed to seek effective assurances from the Italian authorities that the author and her son would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant. In particular, the State party failed to request Italy to undertake: (a) to renew the author's residence permit and to issue a permit to her child; and (b) to receive the author and her son in conditions adapted to the child's age and the family's vulnerable status that would enable them to remain in Italy.[31]

9.11 Consequently, the Committee considers that the removal of the author and her son to Italy, in her particular circumstances and without the aforementioned assurances, would amount to a violation of article 7 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the author and her son to Italy without effective assurances would violate their rights under article 7 of the Covenant.

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[29] See *Y.A.A. and F.H.M. v. Denmark*, para. 7.7.

[30] See, for example, *Pillai et al. v. Canada*, paras. 11.2 and 11.4; and *Ali and Mohamad v. Denmark*, para. 7.8.

[31] See *Jasin v. Denmark*, para. 8.9; *Ali and Mohamad v. Denmark*, para. 7.8; and *Ahmed v. Denmark*, para. 13.8.

11. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's claim, taking into account the State party's obligations under the Covenant, the Committee's present Views and the need to obtain effective assurances from Italy, as set out in paragraph 9.10 above. The State party is also requested to refrain from expelling the author and her son to Italy while their request for asylum is being reconsidered.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.

Annex

Joint opinion of Committee members Yuval Shany, Christof Heyns and Photini Pazartzis (dissenting)

1. We regret that we are unable to join the majority on the Committee in finding that, in deciding to deport the author and her son to Italy, Denmark would, if it implemented the decision, violate its obligations under article 7 of the Covenant.

2. In paragraph 9.3 of the Views, the Committee recalls that: "it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice". Despite this, the majority of the Committee rejected the factual conclusion of the Immigration Service and the Board that the author had failed to establish grounds for asylum because she would be protected in Italy against refoulement, and because "the financial and social conditions offered to her would be adequate for Italy to serve as her first country of asylum" (para. 2.9 above). The majority considered that the State party failed to "fully examine the author's claims, based on her personal circumstances, that despite being granted residence in Italy, she would face unbearable living conditions there" (para. 9.9).

3. We disagree with the analysis offered by the majority, as it has not been shown to us that any of the facts alleged by the author was not taken into account by the Danish authorities. Furthermore, the conclusion reached by the Danish authorities represents, in our view, a reasonable application of the legal standards introduced by the Covenant.

4. According to the well-established case law of the Committee, States parties are obliged not to deport persons from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.[1] Not every exposure to personal hardship in a country of removal would, however, fall within the scope of the removing State's obligations as regards non-refoulement.[2]

5. With the possible exceptions of those individuals who face special hardship due to their particular situation of vulnerability,[3] which renders their plight exceptionally harsh and irreparable in nature, poor living conditions and difficulties in accessing the social services available do not constitute in themselves grounds for non-refoulement. A contrary interpretation, recognizing all individuals facing poverty and limited social assistance as potential victims of article 7 of the Covenant, has little support in the case law of the Committee or in State practice, and would extend the protection of article 7 and the non-refoulement principle (which are absolute in nature) to breaking point.

6. Although we support the Views adopted by the Committee in *Jasin v. Denmark*,[4] the facts in that case were significantly different from the facts of the present case and do not warrant the same legal conclusion. In *Jasin v. Denmark*, the author was in a particularly vulnerable situation, which made it nearly impossible for her to confront the exceptional hardships expected were she to be deported to Italy: a single mother of three small children, having to contend with her own health problems, who had lost her immigration status in Italy and whom the Italian welfare system had demonstrably failed to assist. Under these exceptional circumstances, the Committee was of the view that, without specific assurances of social assistance, Italy could not be considered a "safe country" of removal for the author

[1] See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[2] See communication No. 265/1987, *Vuolanne v. Finland*, Views adopted on 7 April 1989.

[3] See communication No. 2360/2014, *Jasin v. Denmark*, Views adopted on 22 July 2015.

[4] Ibid.

and her children (raising, as a result, the possibility of de facto refoulement from Italy to her country of origin).

7. In the present case, it is not disputed that the author, who has one child, enjoys subsidiary protection and is entitled to receive social assistance in Italy. She does not have any health issues and may also lawfully work to support herself and her son. The facts of the present case also suggest that, unlike in the case of *Jasin v. Denmark*, there has been no demonstrable failure by the Italian authorities to attend to the social or medical needs of the author: she received a housing solution and had access to medical care (see paragraph 2.2 above).

8. Although we consider that deportation to Italy may put the author in a more difficult situation than the one confronting her and her son in Denmark, we do not have before us information suggesting that their plight is different in nature to that of many other asylum seekers who have arrived in Europe in recent years. Nor are we in a position to hold, on the basis of the information before us, that the difficulties to which the author would be exposed upon deportation could be expected to reach the exceptional level of harshness and irreparability that would result in a violation of article 7 of the Covenant. The author's lack of education does not change this conclusion, as there is no reason to believe that she was unable to obtain assistance in Italy in the past because of this reason, or that access to social services in Italy requires asylum seekers to possess a certain level of education.

9. Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the author and her son to Italy was arbitrary or amounted to a manifest error or denial of justice that would entail a violation of article 7 of the Covenant by Denmark. Thus, although we regret the decision of the Danish authorities not to seek individual assurances from Italy prior to the deportation of the author, we do not consider such a failure to violate article 7 of the Covenant.